

pletely performed or otherwise terminated and which were entered into during the period from August 15, 1971, through October 31, 1974.

“(b) The authority conferred by section 4(a) of this Act shall terminate September 30, 1976.”

NON-APPLICABILITY OF NATIONAL EMERGENCIES ACT

The provisions of the National Emergencies Act (Pub. L. 94-412, Sept. 14, 1976, 90 Stat. 1255) not applicable to the powers and authorities conferred by this section and actions taken hereunder, see section 1651 of Title 50, War and National Defense.

EXECUTIVE ORDER NO. 10936

Ex. Ord. No. 10936, Apr. 24, 1961, 26 F.R. 3555, which provided for the reporting and investigation of identical bids in connection with the procurement of goods or services, was revoked by Ex. Ord. No. 12430, July 6, 1983, 48 F.R. 31371.

DEFINITIONS

The definitions in section 102 of Title 40, Public Buildings, Property, and Works, apply to this subchapter.

§ 252a. Simplified acquisition threshold

(a) Simplified acquisition threshold

For purposes of acquisitions by executive agencies, the simplified acquisition threshold is as specified in section 403(11) of this title.

(b) Inapplicable laws

No law properly listed in the Federal Acquisition Regulation pursuant to section 429 of this title shall apply to or with respect to a contract or subcontract that is not greater than the simplified acquisition threshold.

(June 30, 1949, ch. 288, title III, §302A, as added and amended Pub. L. 103-355, title IV, §§4003, 4103(a), Oct. 13, 1994, 108 Stat. 3338, 3341.)

AMENDMENTS

1994—Subsec. (b). Pub. L. 103-355, §4103(a), added subsec. (b).

EFFECTIVE DATE

For effective date and applicability of section, see section 10001 of Pub. L. 103-355, set out as an Effective Date of 1994 Amendment note under section 251 of this title.

§ 252b. Implementation of simplified acquisition procedures

The simplified acquisition procedures contained in the Federal Acquisition Regulation pursuant to section 427 of this title shall apply in executive agencies as provided in such section.

(June 30, 1949, ch. 288, title III, §302B, as added Pub. L. 103-355, title IV, §4203(b), Oct. 13, 1994, 108 Stat. 3346.)

EFFECTIVE DATE

For effective date and applicability of section, see section 10001 of Pub. L. 103-355, set out as an Effective Date of 1994 Amendment note under section 251 of this title.

§ 252c. Implementation of electronic commerce capability

(a) Implementation of electronic commerce capability

(1) The head of each executive agency shall implement the electronic commerce capability required by section 426 of this title.

(2) In implementing the electronic commerce capability pursuant to paragraph (1), the head of an executive agency shall consult with the Administrator for Federal Procurement Policy.

(b) Designation of agency official

The head of each executive agency shall designate a program manager to implement the electronic commerce capability for that agency. The program manager shall report directly to an official at a level not lower than the senior procurement executive designated for the executive agency under section 414(3)¹ of this title.

(June 30, 1949, ch. 288, title III, §302C, as added Pub. L. 103-355, title IX, §9003, Oct. 13, 1994, 108 Stat. 3403; amended Pub. L. 105-85, div. A, title VIII, §850(f)(4)(A), Nov. 18, 1997, 111 Stat. 1850.)

REFERENCES IN TEXT

Section 414 of this title, referred to in subsec. (b), was amended generally by Pub. L. 108-136, div. A, title XIV, §1421(a)(1), Nov. 24, 2003, 117 Stat. 1666, and, as so amended, no longer contains a par. (3). See section 414(c)(1) of this title.

AMENDMENTS

1997—Pub. L. 105-85 amended section catchline and text generally. Prior to amendment, text read as follows:

“(a) IMPLEMENTATION OF FACNET CAPABILITY.—(1) The head of each executive agency shall implement the Federal acquisition computer network (‘FACNET’) capability required by section 426 of this title.

“(2) In implementing the FACNET capability pursuant to paragraph (1), the head of an executive agency shall consult with the Administrator for Federal Procurement Policy.

“(b) DESIGNATION OF AGENCY OFFICIAL.—The head of each executive agency shall designate a program manager to have responsibility for implementation of FACNET capability for that agency and otherwise to implement this section. Such program manager shall report directly to the senior procurement executive designated for the executive agency under section 414(3) of this title.”

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-85 effective 180 days after Nov. 18, 1997, see section 850(g) of Pub. L. 105-85, set out as a note under section 2302c of Title 10, Armed Forces.

EFFECTIVE DATE

For effective date and applicability of section, see section 10001 of Pub. L. 103-355, set out as an Effective Date of 1994 Amendment note under section 251 of this title.

§ 253. Competition requirements

(a) Procurement through full and open competition; competitive procedures

(1) Except as provided in subsections (b), (c), and (g) of this section and except in the case of procurement procedures otherwise expressly authorized by statute, an executive agency in conducting a procurement for property or services—

(A) shall obtain full and open competition through the use of competitive procedures in accordance with the requirements of this subchapter and the Federal Acquisition Regulation; and

(B) shall use the competitive procedure or combination of competitive procedures that is

¹ See References in Text note below.

best suited under the circumstances of the procurement.

(2) In determining the competitive procedures appropriate under the circumstance, an executive agency—

(A) shall solicit sealed bids if—

- (i) time permits the solicitation, submission, and evaluation of sealed bids;
- (ii) the award will be made on the basis of price and other price-related factors;
- (iii) it is not necessary to conduct discussions with the responding sources about their bids; and
- (iv) there is a reasonable expectation of receiving more than one sealed bid; and

(B) shall request competitive proposals if sealed bids are not appropriate under clause (A).

(b) Exclusion of particular source; restriction of solicitation to small business concerns

(1) An executive agency may provide for the procurement of property or services covered by this section using competitive procedures but excluding a particular source in order to establish or maintain any alternative source or sources of supply for that property or service if the agency head determines that to do so—

(A) would increase or maintain competition and would likely result in reduced overall costs for such procurement, or for any anticipated procurement, of such property or services;

(B) would be in the interest of national defense in having a facility (or a producer, manufacturer, or other supplier) available for furnishing the property or service in case of a national emergency or industrial mobilization;

(C) would be in the interest of national defense in establishing or maintaining an essential engineering, research, or development capability to be provided by an educational or other nonprofit institution or a federally funded research and development center;

(D) would ensure the continuous availability of a reliable source of supply of such property or service;

(E) would satisfy projected needs for such property or service determined on the basis of a history of high demand for the property or service; or

(F) in the case of medical supplies, safety supplies, or emergency supplies, would satisfy a critical need for such supplies.

(2) An executive agency may provide for the procurement of property or services covered by this section using competitive procedures, but excluding other than small business concerns in furtherance of sections 638 and 644 of title 15.

(3) A contract awarded pursuant to the competitive procedures referred to in paragraphs (1) and (2) shall not be subject to the justification and approval required by subsection (f)(1) of this section.

(4) A determination under paragraph (1) may not be made for a class of purchases or contracts.

(c) Use of noncompetitive procedures

An executive agency may use procedures other than competitive procedures only when—

(1) the property or services needed by the executive agency are available from only one responsible source and no other type of property or services will satisfy the needs of the executive agency;

(2) the executive agency's need for the property or services is of such an unusual and compelling urgency that the Government would be seriously injured unless the executive agency is permitted to limit the number of sources from which it solicits bids or proposals;

(3) it is necessary to award the contract to a particular source or sources in order (A) to maintain a facility, producer, manufacturer, or other supplier available for furnishing property or services in case of a national emergency or to achieve industrial mobilization, (B) to establish or maintain an essential engineering, research, or development capability to be provided by an educational or other nonprofit institution or a federally funded research and development center, or (C) to procure the services of an expert for use, in any litigation or dispute (including any reasonably foreseeable litigation or dispute) involving the Federal Government, in any trial, hearing, or proceeding before any court, administrative tribunal, or agency, or to procure the services of an expert or neutral for use in any part of an alternative dispute resolution or negotiated rulemaking process, whether or not the expert is expected to testify;

(4) the terms of an international agreement or treaty between the United States Government and a foreign government or international organization, or the written directions of a foreign government reimbursing the executive agency for the cost of the procurement of the property or services for such government, have the effect of requiring the use of procedures other than competitive procedures;

(5) subject to subsection (h)¹ of this section, a statute expressly authorizes or requires that the procurement be made through another executive agency or from a specified source, or the agency's need is for a brand-name commercial item for authorized resale;

(6) the disclosure of the executive agency's needs would compromise the national security unless the agency is permitted to limit the number of sources from which it solicits bids or proposals; or

(7) the head of the executive agency—

(A) determines that it is necessary in the public interest to use procedures other than competitive procedures in the particular procurement concerned, and

(B) notifies the Congress in writing of such determination not less than 30 days before the award of the contract.

(d) Property or services deemed available from only one source; nondelegable authority

(1) For the purposes of applying subsection (c)(1) of this section—

(A) in the case of a contract for property or services to be awarded on the basis of acceptance of an unsolicited research proposal, the

¹ See References in Text note below.

property or services shall be considered to be available from only one source if the source has submitted an unsolicited research proposal that demonstrates a unique and innovative concept the substance of which is not otherwise available to the United States and does not resemble the substance of a pending competitive procurement; and

(B) in the case of a follow-on contract for the continued development or production of a major system or highly specialized equipment when it is likely that award to a source other than the original source would result in (i) substantial duplication of cost to the Government which is not expected to be recovered through competition, or (ii) unacceptable delays in fulfilling the executive agency's needs, such property may be deemed to be available only from the original source and may be procured through procedures other than competitive procedures.

(2) The authority of the head of an executive agency under subsection (c)(7) of this section may not be delegated.

(3)(A) The contract period of a contract described in subparagraph (B) that is entered into by an executive agency pursuant to the authority provided under subsection (c)(2)—

(i) may not exceed the time necessary—

(I) to meet the unusual and compelling requirements of the work to be performed under the contract; and

(II) for the executive agency to enter into another contract for the required goods or services through the use of competitive procedures; and

(ii) may not exceed one year unless the head of the executive agency entering into such contract determines that exceptional circumstances apply.

(B) This paragraph applies to any contract in an amount greater than the simplified acquisition threshold.

(e) Offer requests to potential sources

An executive agency using procedures other than competitive procedures to procure property or services by reason of the application of subsection (c)(2) or (c)(6) of this section shall request offers from as many potential sources as is practicable under the circumstances.

(f) Justification for use of noncompetitive procedures

(1) Except as provided in paragraph (2), an executive agency may not award a contract using procedures other than competitive procedures unless—

(A) the contracting officer for the contract justifies the use of such procedures in writing and certifies the accuracy and completeness of the justification;

(B) the justification is approved—

(i) in the case of a contract for an amount exceeding \$500,000 (but equal to or less than \$10,000,000), by the competition advocate for the procuring activity (without further delegation) or by an official referred to in clause (ii) or (iii); and

(ii) in the case of a contract for an amount exceeding \$10,000,000 (but equal to or less

than \$50,000,000), by the head of the procuring activity or a delegate who, if a member of the armed forces, is a general or flag officer or, if a civilian, is serving in a position in grade GS-16 or above under the General Schedule (or in a comparable or higher position under another schedule); or

(iii) in the case of a contract for an amount exceeding \$50,000,000, by the senior procurement executive of the agency designated pursuant to section 414(3)¹ of this title (without further delegation); and

(C) any required notice has been published with respect to such contract pursuant to section 416 of this title and all bids or proposals received in response to such notice have been considered by such executive agency.

(2) In the case of a procurement permitted by subsection (c)(2), the justification and approval required by paragraph (1) may be made after the contract is awarded. The justification and approval required by paragraph (1) is not required—

(A) when a statute expressly requires that the procurement be made from a specified source;

(B) when the agency's need is for a brand-name commercial item for authorized resale;

(C) in the case of a procurement permitted by subsection (c)(7) of this section; or

(D) in the case of a procurement conducted under (i) the Javits-Wagner-O'Day Act (41 U.S.C. 46 et seq.), or (ii) section 637(a) of title 15.

(3) The justification required by paragraph (1)(A) shall include—

(A) a description of the agency's needs;

(B) an identification of the statutory exception from the requirement to use competitive procedures and a demonstration, based on the proposed contractor's qualifications or the nature of the procurement, of the reasons for using that exception;

(C) a determination that the anticipated cost will be fair and reasonable;

(D) a description of the market survey conducted or a statement of the reasons a market survey was not conducted;

(E) a listing of the sources, if any, that expressed in writing an interest in the procurement; and

(F) a statement of the actions, if any, the agency may take to remove or overcome a barrier to competition before a subsequent procurement for such needs.

(4) In no case may an executive agency—

(A) enter into a contract for property or services using procedures other than competitive procedures on the basis of the lack of advance planning or concerns related to the amount of funds available to the agency for procurement functions; or

(B) procure property or services from another executive agency unless such other executive agency complies fully with the requirements of this subchapter in its procurement of such property or services.

The restriction set out in clause (B) is in addition to, and not in lieu of, any other restriction provided by law.

(g) Simplified procedures for small purchases

(1) In order to promote efficiency and economy in contracting and to avoid unnecessary burdens for agencies and contractors, the Federal Acquisition Regulation shall provide for—

(A) special simplified procedures for purchases of property and services for amounts not greater than the simplified acquisition threshold; and

(B) special simplified procedures for purchases of property and services for amounts greater than the simplified acquisition threshold but not greater than \$5,000,000 with respect to which the contracting officer reasonably expects, based on the nature of the property or services sought and on market research, that offers will include only commercial items.

(2)(A) The Administrator of General Services shall prescribe regulations that provide special simplified procedures for acquisitions of leasehold interests in real property at rental rates that do not exceed the simplified acquisition threshold.

(B) For purposes of subparagraph (A), the rental rate or rates under a multiyear lease do not exceed the simplified acquisition threshold if the average annual amount of the rent payable for the period of the lease does not exceed the simplified acquisition threshold.

(3) A proposed purchase or contract for an amount above the simplified acquisition threshold may not be divided into several purchases or contracts for lesser amounts in order to use the simplified procedures required by paragraph (1).

(4) In using the simplified procedures, an executive agency shall promote competition to the maximum extent practicable.

(5) An executive agency shall comply with the Federal Acquisition Regulation provisions referred to in section 427(f) of this title.

(h) Efficient implementation of requirement

The Federal Acquisition Regulation shall ensure that the requirement to obtain full and open competition is implemented in a manner that is consistent with the need to efficiently fulfill the Government's requirements.

(i) Merit-based award of contracts

(1) It is the policy of Congress that an executive agency should not be required by legislation to award a new contract to a specific non-Federal Government entity. It is further the policy of Congress that any program, project, or technology identified in legislation be procured through merit-based selection procedures.

(2) A provision of law may not be construed as requiring a new contract to be awarded to a specified non-Federal Government entity unless that provision of law—

(A) specifically refers to this subsection;

(B) specifically identifies the particular non-Federal Government entity involved; and

(C) specifically states that the award to that entity is required by such provision of law in contravention of the policy set forth in paragraph (1).

(3) For purposes of this subsection, a contract is a new contract unless the work provided for in the contract is a continuation of the work per-

formed by the specified entity under a preceding contract.

(4) This subsection shall not apply with respect to any contract that calls upon the National Academy of Sciences to investigate, examine, or experiment upon any subject of science or art of significance to an executive agency and to report on such matters to the Congress or any agency of the Federal Government.

(j)(1)(A) Except as provided in subparagraph (B), in the case of a procurement permitted by subsection (c), the head of an executive agency shall make publicly available, within 14 days after the award of the contract, the documents containing the justification and approval required by subsection (f)(1) with respect to the procurement.

(B) In the case of a procurement permitted by subsection (c)(2), subparagraph (A) shall be applied by substituting "30 days" for "14 days".

(2) The documents shall be made available on the website of the agency and through a government-wide website selected by the Administrator for Federal Procurement Policy.

(3) This subsection does not require the public availability of information that is exempt from public disclosure under section 552(b) of title 5.

(June 30, 1949, ch. 288, title III, §303, 63 Stat. 395; July 12, 1952, ch. 703, §1(m), 66 Stat. 594; Pub. L. 90-268, §2, Mar. 16, 1968, 82 Stat. 49; Pub. L. 98-369, div. B, title VII, §2711(a)(1), July 18, 1984, 98 Stat. 1175; Pub. L. 98-577, title V, §504(a)(1), (2), Oct. 30, 1984, 98 Stat. 3086; Pub. L. 99-145, title IX, §961(a)(2), title XIII, §1304(c)(2), (3), Nov. 8, 1985, 99 Stat. 703, 742; Pub. L. 101-510, div. A, title VIII, §806(c), Nov. 5, 1990, 104 Stat. 1592; Pub. L. 103-355, title I, §§1051-1053, 1055(a), title IV, §4402(a), title VII, §7203(b)(1), Oct. 13, 1994, 108 Stat. 3260, 3261, 3265, 3348, 3380; Pub. L. 104-106, div. D, title XLI, §§4101(b), 4102(b), title XLII, §4202(b)(1), title XLIII, §4321(e)(2), Feb. 10, 1996, 110 Stat. 642, 643, 653, 674; Pub. L. 104-320, §§7(a)(2), 11(c)(2), Oct. 19, 1996, 110 Stat. 3871, 3873; Pub. L. 105-85, div. A, title VIII, §850(f)(4)(B), Nov. 18, 1997, 111 Stat. 1850; Pub. L. 110-181, div. A, title VIII, §844(a), Jan. 28, 2008, 122 Stat. 239; Pub. L. 110-417, [div. A], title VIII, §862(a), Oct. 14, 2008, 122 Stat. 4546.)

REFERENCES IN TEXT

Subsection (h) of this section, referred to in subsec. (c)(5), was redesignated subsec. (i) and a new subsec. (h) was added by Pub. L. 104-106, div. D, title XLI, §4101(b), Feb. 10, 1996, 110 Stat. 642.

Section 414 of this title, referred to in subsec. (f)(1)(B)(iii), was amended generally by Pub. L. 108-136, div. A, title XIV, §1421(a)(1), Nov. 24, 2003, 117 Stat. 1666, and, as so amended, no longer contains a par. (3). See section 414(c)(1) of this title.

The Javits-Wagner-O'Day Act, referred to in subsec. (f)(2)(D), is act June 25, 1938, ch. 697, 52 Stat. 1196, as amended, which is classified to sections 46 to 48c of this title. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

2008—Subsec. (d)(3). Pub. L. 110-417 added par. (3).

Subsec. (f)(4), (5). Pub. L. 110-181, §844(a)(2), redesignated par. (5) as (4) and struck out former par. (4) which read as follows: "The justification required by paragraph (1)(A) and any related information shall be made available for inspection by the public consistent with the provisions of section 552 of title 5."

Subsec. (j). Pub. L. 110-181, §844(a)(1), added subsec. (j).

1997—Subsec. (g)(5). Pub. L. 105-85 substituted “section 427(f)” for “section 427(g)”.

1996—Subsec. (c)(3)(C). Pub. L. 104-320 substituted “agency, or to procure the services of an expert or neutral for use” for “agency, or” and inserted “or negotiated rulemaking” after “alternative dispute resolution”.

Subsec. (f)(1)(B)(i). Pub. L. 104-106, §4102(b)(1), substituted “\$500,000 (but equal to or less than \$10,000,000)” for “\$100,000 (but equal to or less than \$1,000,000)” and “(ii) or (iii); and” for “(ii), (iii), or (iv);”.

Subsec. (f)(1)(B)(ii). Pub. L. 104-106, §4102(b)(2), substituted “\$10,000,000 (but equal to or less than \$50,000,000)” for “\$1,000,000 (but equal to or less than \$10,000,000)” and “civilian,” for “civilian;”.

Subsec. (f)(1)(B)(iii). Pub. L. 104-106, §4102(b)(3), substituted “\$50,000,000” for “\$10,000,000”.

Subsec. (f)(2)(D). Pub. L. 104-106, §4321(e)(2), substituted “the Javits-Wagner-O’Day Act (41 U.S.C. 46 et seq.),” for “the Act of June 25, 1938 (41 U.S.C. 46 et seq.),” popularly referred to as the Wagner-O’Day Act.”

Subsec. (g)(1). Pub. L. 104-106, §4202(b)(1)(A), substituted “shall provided for—” for “shall provide for special simplified procedures for purchases of property and services for amounts not greater than the simplified acquisition threshold.” and added subpars. (A) and (B).

Subsec. (g)(5). Pub. L. 104-106, §4202(b)(1)(B), added par. (5).

Subsecs. (h), (i). Pub. L. 104-106, §4101(b), added subsec. (h) and redesignated former subsec. (h) as (i).

1994—Subsec. (a)(1)(A). Pub. L. 103-355, §1051(1), substituted “Federal Acquisition Regulation” for “modifications to regulations promulgated pursuant to section 2752 of the Competition in Contracting Act of 1984”.

Subsec. (b)(1)(D) to (F). Pub. L. 103-355, §1052(a), added subpars. (D) to (F).

Subsec. (b)(4). Pub. L. 103-355, §1052(b), added par. (4).

Subsec. (c)(3). Pub. L. 103-355, §1055(a), struck out “or” before “(B)” and inserted “, or” and cl. (C) before period at end.

Subsec. (c)(5). Pub. L. 103-355, §7203(b)(1)(A), inserted “subject to subsection (h) of this section,” before “a statute”.

Subsec. (f)(1)(B)(i). Pub. L. 103-355, §1053, inserted before semicolon at end “or by an official referred to in clause (ii), (iii), or (iv)”.

Subsec. (g)(1). Pub. L. 103-355, §4402(a)(1)(A), substituted “purchases of property and services for amounts not greater than the simplified acquisition threshold” for “small purchases of property and services”.

Pub. L. 103-355, §§1051(2), 4402(a)(1)(B), amended par. (1) identically, substituting “Federal Acquisition Regulation” for “regulations modified, in accordance with section 2752 of the Competition in Contracting Act of 1984.”

Subsec. (g)(2). Pub. L. 103-355, §4402(a)(2), added par. (2) and struck out former par. (2) which read as follows: “For the purposes of this subchapter, a small purchase is a purchase or contract for an amount which does not exceed the small purchase threshold.”

Subsec. (g)(3). Pub. L. 103-355, §4402(a)(3), substituted “simplified acquisition threshold” for “small purchase threshold” and “simplified procedures” for “small purchase procedures”.

Subsec. (g)(4). Pub. L. 103-355, §4402(a)(4), substituted “the simplified procedures” for “small purchase procedures”.

Subsec. (g)(5). Pub. L. 103-355, §4402(a)(5), struck out par. (5) which read as follows: “In this subsection, the term ‘small purchase threshold’ has the meaning given such term in section 403(11) of this title.”

Subsec. (h). Pub. L. 103-355, §7203(b)(1)(B), added subsec. (h).

1990—Subsec. (g)(2), (3). Pub. L. 101-510, §806(c)(1), (2), substituted “the small purchase threshold” for “\$25,000”.

Subsec. (g)(5). Pub. L. 101-510, §806(c)(3), added par. (5).

1985—Subsec. (f)(1)(C). Pub. L. 99-145, §1304(c)(2), substituted “any” for “Any”.

Subsec. (f)(2). Pub. L. 99-145, §961(a)(2), added subpars. (A) and (B), designated existing provision as subpar. (C), and redesignated as subpar. (D), cls. (i) and (ii) provisions previously designated subpars. (A) and (B), substituting in cl. (ii) “section 637(a) of title 15” for “the authority of section 637(a) of title 15”.

Subsec. (g)(1). Pub. L. 99-145, §1304(c)(3), inserted a comma after “1984”.

1984—Subsec. (a). Pub. L. 98-369 substituted provisions requiring procurement through full and open competition for provisions requiring advertisement for bids to be made a sufficient time prior to the purchase or contract and to permit full and free competition, and struck out provision that no advertisement or bid invitation for carriage of Government property in other than Government-owned cargo containers could specify carriage in cargo containers of any stated length, height, or width.

Subsec. (b). Pub. L. 98-369 substituted provisions regarding the exclusion of a particular source of property or services from competitive procedures for provisions regarding the opening of bids and procedures for awards, and inserted provision that in fulfilling the statutory requirements relating to small business concerns and socially and economically disadvantaged small business concerns, an executive agency shall use competitive procedures but may restrict a solicitation to allow only such business concerns to compete.

Subsec. (b)(2). Pub. L. 98-577, §504(a)(1), substituted provisions to the effect that executive agencies may provide for procurement of property or services covered by this section using competitive procedures but excluding other than small business concerns for former provisions which provided that executive agencies shall use competitive procedures but may restrict a solicitation to allow only such small business concerns to compete.

Subsec. (b)(3). Pub. L. 98-577, §504(a)(1), added par. (3).

Subsecs. (c) to (g). Pub. L. 98-369 added subsecs. (c) to (g).

Subsec. (f)(2). Pub. L. 98-577, §504(a)(2), designated the final sentence as subpar. (A) and added subpar. (B).

1968—Subsec. (a). Pub. L. 90-268 inserted provision that no advertisement or invitation to bid for carriage of Government property in other than Government-owned cargo containers shall specify carriage of such property in cargo containers of any stated length, height, or width.

1952—Subsec. (a). Act July 12, 1952, substituted “property” for “supplies”.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-85 effective 180 days after Nov. 18, 1997, see section 850(g) of Pub. L. 105-85, set out as a note under section 2302c of Title 10, Armed Forces.

EFFECTIVE DATE OF 1996 AMENDMENT

For effective date and applicability of amendment by Pub. L. 104-106, see section 4401 of Pub. L. 104-106, set out as a note under section 251 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103-355, see section 10001 of Pub. L. 103-355, set out as a note under section 251 of this title.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by section 961(a)(2) of Pub. L. 99-145 effective as if included in enactment of Competition in Contracting Act of 1984, Pub. L. 98-369, div. B, title VII, see section 961(e) of Pub. L. 99-145, set out as a note under section 2304 of Title 10, Armed Forces.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable with respect to any solicitation for bids or proposals issued after

Mar. 31, 1985, see section 2751 of Pub. L. 98-369, set out as a note under section 251 of this title.

EFFECTIVE DATE

Section effective July 1, 1949, see section 605, formerly section 505, of act June 30, 1949, ch. 288, 63 Stat. 403; renumbered by act Sept. 5, 1950, ch. 849, §6(a), (b), 64 Stat. 583.

TERMINATION OF AUTHORITY TO ISSUE SOLICITATIONS FOR PURCHASES OF COMMERCIAL ITEMS IN EXCESS OF SIMPLIFIED ACQUISITION THRESHOLD

Authority to issue solicitations for purchases of commercial items in excess of simplified acquisition threshold pursuant to special simplified procedures authorized by subsec. (g)(1) of this section to expire three years after date certain amendments by section 4202 of Pub. L. 104-106 take effect pursuant to section 4401(b) of Pub. L. 104-106, set out as a note under section 251 of this title, see section 4202(e) of Pub. L. 104-106, set out as a note under section 2304 of Title 10, Armed Forces.

REFERENCES IN OTHER LAWS TO GS-16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS-16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, §101(c)(1)] of Pub. L. 101-509, set out in a note under section 5376 of Title 5.

PUBLIC DISCLOSURE OF NONCOMPETITIVE CONTRACTING FOR THE RECONSTRUCTION OF INFRASTRUCTURE IN IRAQ

Pub. L. 108-136, div. A, title XIV, §1442, Nov. 24, 2003, 117 Stat. 1674, provided that:

“(a) DISCLOSURE REQUIRED.—

“(1) PUBLICATION AND PUBLIC AVAILABILITY.—The head of an executive agency of the United States that enters into a contract for the repair, maintenance, or construction of infrastructure in Iraq without full and open competition shall publish in the Federal Register or Commerce Business Daily and otherwise make available to the public, not later than 30 days after the date on which the contract is entered into, the following information:

“(A) The amount of the contract.

“(B) A brief description of the scope of the contract.

“(C) A discussion of how the executive agency identified, and solicited offers from, potential contractors to perform the contract, together with a list of the potential contractors that were issued solicitations for the offers.

“(D) The justification and approval documents on which was based the determination to use procedures other than procedures that provide for full and open competition.

“(2) INAPPLICABILITY TO CONTRACTS AFTER FISCAL YEAR 2005.—Paragraph (1) does not apply to a contract entered into after September 30, 2005.

“(b) CLASSIFIED INFORMATION.—

“(1) AUTHORITY TO WITHHOLD.—The head of an executive agency may—

“(A) withhold from publication and disclosure under subsection (a) any document that is classified for restricted access in accordance with an Executive order in the interest of national defense or foreign policy; and

“(B) redact any part so classified that is in a document not so classified before publication and disclosure of the document under subsection (a).

“(2) AVAILABILITY TO CONGRESS.—In any case in which the head of an executive agency withholds information under paragraph (1), the head of such executive agency shall make available an unredacted version of the document containing that information to the chairman and ranking member of each of the following committees of Congress:

“(A) The Committee on Governmental Affairs of the Senate and the Committee on Government Reform [now Committee on Oversight and Government Reform] of the House of Representatives.

“(B) The Committees on Appropriations of the Senate and House of Representatives.

“(C) Each committee that the head of the executive agency determines has legislative jurisdiction for the operations of such department or agency to which the information relates.

“(c) FISCAL YEAR 2003 CONTRACTS.—This section shall apply to contracts entered into on or after October 1, 2002, except that, in the case of a contract entered into before the date of the enactment of this Act [Nov. 24, 2003], subsection (a) shall be applied as if the contract had been entered into on the date of the enactment of this Act.

“(d) RELATIONSHIP TO OTHER DISCLOSURE LAWS.—Nothing in this section shall be construed as affecting obligations to disclose United States Government information under any other provision of law.

“(e) DEFINITIONS.—In this section, the terms ‘executive agency’ and ‘full and open competition’ have the meanings given such terms in section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403).”

SMALL BUSINESS ACT

Section 2711(c) of Pub. L. 98-369 provided that: “The amendments made by this section [amending this section and section 259 of this title and enacting sections 253a and 253b of this title] do not supersede or affect the provisions of section 8(a) of the Small Business Act (15 U.S.C. 637(a)).”

DEFINITIONS

The definitions in section 102 of Title 40, Public Buildings, Property, and Works, apply to this subchapter.

§ 253a. Planning and solicitation requirements

(a) Preparation; planning; specifications in solicitation

(1) In preparing for the procurement of property or services, an executive agency shall—

(A) specify its needs and solicit bids or proposals in a manner designed to achieve full and open competition for the procurement;

(B) use advance procurement planning and market research; and

(C) develop specifications in such manner as is necessary to obtain full and open competition with due regard to the nature of the property or services to be acquired.

(2) Each solicitation under this subchapter shall include specifications which—

(A) consistent with the provisions of this subchapter, permit full and open competition;

(B) include restrictive provisions or conditions only to the extent necessary to satisfy the needs of the executive agency or as authorized by law.

(3) For the purposes of paragraphs (1) and (2), the type of specification included in a solicitation shall depend on the nature of the needs of the executive agency and the market available to satisfy such needs. Subject to such needs, specifications may be stated in terms of—

(A) function, so that a variety of products or services may qualify;

(B) performance, including specifications of the range of acceptable characteristics or of the minimum acceptable standards; or

(C) design requirements.